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No. _____

IN THE
SUPREME COURT OF THE UNITED STATES

October Term, 1984

THE UNITED PRESBYTERIAN CHURCH IN THE UNITED STATES OF AMERICA, *et al.*,
Petitioners

v.

FIRST PRESBYTERIAN CHURCH OF SCHENECTADY, *et al.*,
Respondents

PETITION FOR A WRIT OF CERTIORARI TO THE COURT OF APPEALS OF NEW YORK

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QUESTION PRESENTED

Does an injunction issued by a state court against the exercise of control over local church property by a hierarchical religious denomination constitute impermissible judicial intrusion into the government and internal administration of a hierarchical church in violation of the First and Fourteenth Amendments where the express provisions of the denomination's constitution place the local property under control of the denomination?

PARTIES TO THE PROCEEDING

Petitioners herein are The United Presbyterian Church in the United States of America, an unincorporated religious denomination, and the Presbytery of Albany, an unincorporated judicatory of the denomination. Respondents are the First Presbyterian Church of Schenectady and four individuals, Herbert S. Mekeel, Michael R. Alford, Robert V. Klint, and William T. Lanier, who were the Minister, Associate Minister, and two members of the session, respectively, of the First Presbyterian Church of Schenectady prior to February 1, 1977, when petitioner the Presbytery of Albany replaced the session of the First Presbyterian Church of Schenectady and dissolved the pastoral relationships between the First Presbyterian Church of Schenectady and respondents Mekeel and Alford.

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FIRST PRESBYTERIAN CHURCH OF SCHENECTADY, *et al.*,

Respondents

PETITION FOR A WRIT OF CERTIORARI TO THE COURT OF APPEALS OF NEW YORK

The United Presbyterian Church in the United States of America and the Presbytery of Albany respectfully petition for a writ of certiorari to review the judgment of the Court of Appeals of New York in the above-entitled case.

OPINIONS BELOW

The opinion of the Court of Appeals of New York, (App. A-1), is reported at 62 N.Y.2d 110, 476 N.Y.S.2d 86, and 464 N.E.2d 454. The Order of the Court of Appeals of New York denying rehearing, (App. A-41), is not reported. The opinion of the Supreme Court of New York, Appellate Division, (App. A-24), is reported at 92 A.D.2d 164 and 461 N.Y.S.2d 903. The opinion of the Supreme Court of New York, Saratoga County, (App. A-16), is not reported.

JURISDICTION

The judgment of the Court of Appeals of New York was entered on May 15, 1984. The Order of the Court of Appeals of New York denying a timely petition for rehearing was entered on July 5, 1984. The jurisdiction of this Court is invoked under 28 U.S.C. §1257(3).

CONSTITUTIONAL PROVISIONS INVOLVED

U.S. Const., Amend. I:

> Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof***.

U.S. Const., Amend. XIV, Sec. 1:

> ***nor shall any State deprive any person of life, liberty, or property, without due process of law***.

STATEMENT OF THE CASE

In this petition the United Presbyterian Church in the United States of America ("the United Presbyterian Church") and the Presbytery of Albany, one of its denominational tribunals, seek review of a decision of the Court of Appeals of New York which in violation of the First and Fourteenth Amendments enjoins the United Presbyterian Church and its tribunals from governing a

particular (local) United Presbyterian Church in accordance with church law expressly set forth in the denomination's constitution ("the Constitution"), and which is thereby contrary to the decisions of this Court in *Serbian Eastern Orthodox Diocese v. Milivojevich*, 426 U.S. 696 (1976), *Kedroff v. Saint Nicholas Cathedral*, 344 U.S. 94 (1952), and *Kreshik v. Saint Nicholas Cathedral*, 363 U.S. 190 (1960), and in *Jones v. Wolf*, 443 U.S. 595 (1979), this Court's most recent decision regarding the resolution of church property disputes.

This action arises out of an attempt by the majority of the members of the First Presbyterian Church of Schenectady ("the First Presbyterian Church"), who have doctrinal differences with the United Presbyterian Church, to sever unilaterally (that is, without permission of the denomination) the church from the United Presbyterian Church and to take with them the local church property. The decision of the Court of Appeals prohibits the denomination from replacing the leadership of the local church and exercising control over the local church property as provided in the Book of Order, that part of the two-volume Constitution that sets forth the form of government of the United Presbyterian Church.

The presbyterian form of church government is characterized by ascending levels of tribunals, referred to as "judicatories," in which a "presbytery" composed of both clergy and laymen performs the functions of a bishop. The lowest judicatory is the "session" of each particular church, which is composed of the ministers and ruling elders (laymen who are ordained to the position of elder) of the particular church. Each particular church is under the authority and jurisdiction of a presbytery, the next higher judicatory, which is composed of ministers and elders representing all the particular churches in a certain geographic area. Three or more presbyteries are grouped under the jurisdiction of the next higher judicatory, which is known as a "synod." The highest judicatory of the United Presbyterian Church is the

"General Assembly," which is composed of representatives elected by each presbytery. Actions of lower judicatories are subject to review and to correction by higher judicatories and appeals may be taken from lower judicatories to judicial commissions appointed by higher judicatories, which sit as courts. It is this ascending order of judicatories that has consistently caused the United Presbyterian Church to be recognized as "hierarchical" by this Court and numerous state courts.

The presbytery is the basic unit of church government in the United Presbyterian Church. The Constitution provides that presbyteries have the power to form and to receive new churches; to dissolve, divide, or unite particular churches; to review and approve or require the correction of, the records of church sessions; and to receive, dismiss, ordain, and install ministers. Every particular church must be organized by a presbytery. A particular church must obtain written permission of its presbytery before it may sell or encumber its real property, before it may acquire real property subject to a condition, and before it may lease the real property it uses for worship or lease for more than five years any of its other real property. Where a presbytery has chosen to dissolve a particular church, the presbytery may dispose of as it wishes the property held by that particular church. In addition to these and other specific powers, each presbytery has general power to "take effectual care that [sessions of particular churches] observe the Constitution of the Church" and to "order whatever pertains to the spiritual welfare of the churches under its care."

At issue in the instant case is the presbytery's express power to appoint an administrative commission with the full powers of a session to replace the session of a particular church whenever the presbytery determines, after notice and a hearing, that the session of that particular church "is unable or unwilling to manage wisely the affairs of its church." Under the Constitution, the powers of session, and thus the powers of any such ad-

ministrative commission, include exclusive authority over local church buildings and property, subject to the authority of the higher judicatories.[1] It is this power of a presbytery to appoint an administrative commission with full powers of session over a local church and the power of that administrative commission to exercise the powers of a session that the Court of Appeals has enjoined.

The First Presbyterian Church has been a particular church of the United Presbyterian Church since at least 1770[2] and since that time has been under the care and jurisdiction of the Presbytery of Albany ("the Presbytery") and its predecessor presbyteries. On January 24, 1977, a majority of the members of the First Presbyterian Church voted in favor of a resolution that purported to "sever" or withdraw the church from the Presbytery and to retain control of all the church properties. The resolution was introduced by members who apparently believed that the United Presbyterian Church's support of certain political causes violated presbyterian doctrine.

On February 1, 1977, the Presbytery appointed an administrative commission with full powers of session to replace the session of the First Presbyterian Church and ordered that the session of the First Presbyterian Church "cease to act until directed otherwise by the Presbytery." This action reflected the determination of the Presbytery as a judicatory of a hierarchical denomination that the

1. Under the Constitution, each particular church is to form a nonprofit corporation to hold title to its real property. In 1803 the First Presbyterian Church formed such a corporation, which holds title to the real property at issue in the instant case. The Constitution provides that the session may delegate its responsibilities for the management of property to the trustees (the officers) of the nonprofit corporation, but that the trustees are always subject to the "superior authority and direction" of the session, and thus to the higher judicatories of the denomination.

2. Prior to 1958 the United Presbyterian Church was known as The Presbyterian Church in the United States of America. As a result of a denominational merger in 1983, the denomination is now known as Presbyterian Church (U.S.A.).

resolution to withdraw, which was proposed by the session of the First Presbyterian Church, violated church law, and that therefore the session was "unable or unwilling to manage wisely the affairs of its church."

Respondents did not appeal to the Synod of jurisdiction or to the General Assembly the action of the Presbytery in replacing the session of the First Presbyterian Church, but rather instituted this action seeking a declaratory judgment that the First Presbyterian Church is independent of the United Presbyterian Church and an injunction against any interference by the denomination and the Presbytery with respondents' use of the property. Petitioners counterclaimed, seeking an injunction against interference with the activities of the Presbytery, through its administrative commission, in maintaining the First Presbyterian Church as an ongoing United Presbyterian Church. The trial court dismissed respondents' request for declaratory relief and denied petitioners' counterclaim, but granted the permanent injunction sought by respondents. The Appellate Division of the New York Supreme Court reversed and granted petitioners' counterclaim.

The Court of Appeals of New York reinstated the Order of the trial court. Following the circular reasoning of the trial court the Court of Appeals properly denied respondents' request for declaratory relief, holding that to determine that the First Presbyterian Church is independent of the United Presbyterian Church would require a constitutionally impermissible inquiry with respect to whether respondents could unilaterally withdraw under church law, but nonetheless permitted an injunction to issue which prohibits the denomination from asserting express Constitutional authority over the First Presbyterian Church.

The Court of Appeals of New York denied petitioners' timely petition for rehearing on July 5, 1984, and this petition for a writ of certiorari followed.

The constitutional questions with respect to which petitioners seek review were first raised in opposition to a request for a preliminary injunction sought by the First Presbyterian Church in a prior federal court action involving some of the same parties as the instant case[3], were initially raised in the instant case in petitioners' Answer and Counterclaim to respondents' Complaint,[4] and have been pressed at every subsequent stage of this action.

REASON FOR GRANTING THE WRIT

A. The decision of the Court of Appeals of New York enjoins the United Presbyterian Church from the free exercise of religion as provided in the denomination's Constitution, and is directly contrary to this Court's decisions in *Serbian Eastern Orthodox Diocese v. Milivojevich*, *Kedroff v. Saint Nicholas Cathedral*, *Kreshik v. Saint Nicholas Cathedral*, and *Jones v. Wolf*.

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3. The First Presbyterian Church initially brought an action against the United Presbyterian Church in the U.S. District Court for the Northern District of New York requesting the same relief sought in the instant case. The District Court denied the local group's request for a preliminary injunction, ruling that the Presbytery had acted on authority conferred upon it by ecclesiastical law and that the Court was bound by the Presbytery's decision. *First Presbyterian Church of Schenectady v. United Presbyterian Church in the United States of America*, 430 F.Supp. 450 (N.D.N.Y. 1977).

4. "[P]ursuant to the religious rights of the defendants under the first amendment to the Constitution of the United States of America the court lacks jurisdiction to consider, hear or adjudicate any of the allegations of the plaintiffs' complaint having to do with the doctrine, dogmas, belief or tenets of faith of the United Presbyterian Church in the United States of America (UPCUSA) or any alleged departure from those doctrines, or to interfere in the internal ecclesiastical administration of the UPCUSA except to accept and enforce the decisions of the highest applicable judicatory as they may apply to civil matters affecting the property and civil rights of the parties to this action." (Fourth paragraph of petitioners' Answer and Counterclaim to respondents' Complaint).

The decision of the Court of Appeals of New York permanently enjoining the United Presbyterian Church and the Presbytery of Albany from "interfering" with respondents' use of the local church property prohibits the Presbytery from exercising its express power under the Constitution to replace the session of the First Presbyterian Church with an administrative commission with full powers of session and through that commission to control the use of the local church property at issue.

The specific section of the Form of Government, one of three parts of the Book of Order, pursuant to which the administrative commission was appointed provides as follows:

> Whenever, after a thorough investigation, and after full opportunity to be heard has been accorded to the session in question, the presbytery of jurisdiction shall determine that the session of a particular church is unable or unwilling to manage wisely the affairs of its church, the presbytery may appoint a commission composed of ministers and ruling elders, with the full power of a session. This commission shall take the place of the existing session, if any, which shall cease to act until such time as the presbytery shall otherwise direct.

Form of Government, Chapter XI, Section 15 (referred to hereafter as "Section 15"). In the instant case, the Presbytery's decision that the session of the First Presbyterian Church was "unable or unwilling to manage wisely the affairs of its church" was based on the Presbytery's determination that the vote to withdraw violated church law. It is undisputed that the Presbytery followed the procedures, specifically, conducting an investigation and giving the session an opportunity to be heard, required by Section 15 before replacing the session with the administrative commission.

The Constitution specifically defines the powers of session, and thus the powers of any administrative com-

mission appointed under Section 15, to include exclusive authority over the use of buildings and property of the First Presbyterian Church and its financial and corporate affairs, as follows:

> Subject to the provisions of the Directory for Worship, the session shall have and exercise exclusive authority over the worship of the congregation, including the musical service; and shall determine the times and places of preaching the Word and all other religious services. *It shall also have exclusive authority over the uses to which the church buildings and properties may be put*, but may temporarily delegate the determination of such uses, subject always to the superior authority and direction of the session. . . .

Form of Government, Chapter XI, Section 7 (emphasis added).

> The church session shall have authority over all of the affairs and activities of the particular church, except such matters as may, by this Form of Government, be specifically accorded to the pastor, to the congregation, or to a higher judicatory. The session may from time to time delegate administrative responsibilities in respect to the care and management of church properties and in respect to the financial affairs of the church either to the board of trustees or to the board of deacons or in part to one and in part to the other, subject always to the superior authority and direction of the session. . . .

Form of Government, Chapter XI, Section 8.

The facts of the instant case place it squarely within this Court's decision in *Serbian Eastern Orthodox Diocese v. Milivojevich*, 426 U.S. 696 (1976). The dispute in *Serbian* arose when superior tribunals (the Holy Assembly of Bishops and the Holy Synod) of the Serbian Orthodox Church, a hierarchical denomination, replaced and defrocked a bishop and divided his diocese into three

parts, just as the Presbytery in the instant case replaced the session of the First Presbyterian Church. Under church law the bishop, like the session of a particular church of the United Presbyterian Church, controlled the church property. The defrocked bishop sought to enjoin the denomination from interfering with the Diocesan property (which, like the property at issue in the instant case, was held by nonprofit corporations). *Id.* at 709. The Supreme Court of Illinois invalidated the actions of the Holy Assembly and Holy Synod and in effect reinstated the bishop, ruling that the defrockment proceedings did not comport with the internal rules of the denomination and, purporting to apply a "neutral principles" rule, that the tribunals exceeded their jurisdiction in reorganizing the diocese. *Id.* at 708, 720-721. This Court reversed, holding that the Illinois Court had unconstitutionally substituted its own interpretation of the denomination's constitution and polity for the interpretation of the ecclesiastical tribunals:

> In short, the First and Fourteenth Amendments permit hierarchical religious organizations to establish their own rules and regulations for internal discipline and government, and to create tribunals for adjudicating disputes over these matters. When this choice is exercised and ecclesiastical tribunals are created to decide disputes over the government and direction of subordinate bodies, the Constitution requires that civil courts accept their decisions as binding upon them.

Id. at 724-725.

In two earlier cases, *Kedroff v. Saint Nicholas Cathedral*, 344 U.S. 94 (1952), and *Kreshik v. Saint Nicholas Cathedral*, 363 U.S. 190 (1960), this Court had reversed decisions of the Court of Appeals of New York where the issue was which prelate was entitled to the use and occupancy of a cathedral in New York — the prelate appointed by the longstanding Moscow-based hierarchy

or the prelate appointed by a competing hierarchy more recently established in North America. This Court ruled that the states may not by legislation or by common law decision transfer hierarchical control of a denomination, and the attendant control over church property, from one group to another. The result of these decisions was to leave control of the cathedral under the Moscow-based hierarchy.

The ecclesiastical authority by which the Presbytery replaced the session of the First Presbyterian Church is as valid as the authority of the Holy Assembly of Bishops and Holy Synod recognized by this Court in *Serbian* and as the authority of the Moscow prelate recognized in the *Kedroff* and *Kreshik* decisions and should have been so recognized by the Court of Appeals.

The *Serbian*, *Kedroff*, and *Kreshik* decisions rely on the well-established doctrine of judicial deference to the internal decision-making of hierarchical religious denominations. The "deference rule" was first articulated as a matter of federal common law by this Court in *Watson v. Jones*, 80 U.S. (13 Wall.) 679 (1872), a church property dispute, like the instant case, in the United Presbyterian Church. In *Watson v. Jones* this Court held that "whenever the questions of discipline, or of faith, or ecclesiastical rule, custom, or law have been decided by the highest of these church judicatories [of a hierarchical denomination] to which the matter has been carried, the legal tribunals must accept such decisions as final, and as binding on them, in their application to the case before them." 80 U.S. (13 Wall.) at 727.[5] Subsequent decisions

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5. There is no issue presented by the instant case with respect to whether or not the United Presbyterian Church is a "hierarchical" denomination. The Court of Appeals held, as did this Court in *Watson v. Jones* and as have many other state appellate courts, that the United Presbyterian Church has a hierarchical, as opposed to a congregational, polity. (App. A-2). *Accord Lowe v. First Presbyterian Church*, 56 Ill.2d 404, 308 N.E.2d 801, *cert. denied*, 419 U.S. 895 (1974); *Fonken v. Community Church of Kamrar*, 339 N.W.2d 810 (Iowa

of this Court held that the deference rule has constitutional standing under the First Amendment, *Jones v. Wolf*, 443 U.S. 595 (1979); *Presbyterian Church in the United States v. Mary Elizabeth Blue Hull Memorial Presbyterian Church*, 393 U.S. 440, 445-449 (1969); *Kedroff v. Saint Nicholas Cathedral*, 344 U.S. 94, 115-116 (1952), and that the deference rule applies to issues relating to church government or polity as well as to questions of religious faith or doctrine. *Jones v. Wolf*, 443 U.S. 595, 602 (1979); *Serbian Eastern Orthodox Diocese v. Milivojevich*, 426 U.S. 696, 709-710 (1976).

In *Jones v. Wolf*, this Court reaffirmed, all nine Justices concurring, that the deference rule is a constitutionally permitted approach, but also held (5-to-4) that states may choose to adopt the alternative "neutral principles" rule, in which the civil court looks only to certain documents, such as deeds, corporate charters, and denominational constitutions, to determine who is entitled to the local church property. In sanctioning the "neutral principles" rule, the majority in *Jones v. Wolf* recognized that there may be cases in which application of the "neutral principles" rule would be unconstitutional and where the deference rule followed in *Serbian*, *Kedroff*, and *Kreshik* would be the only permitted approach:

> [T]here may be cases where the deed, the corporate charter, or the constitution of the general church incorporates religious concepts in the provisions relating to the ownership of property. If in such a case the

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NOTES *(Continued)*

1983); *Babcock Memorial Presbyterian Church v. Presbytery of Baltimore*, 296 Md. 573, 464 A.2d 1008 (1983), *cert. denied*, 104 S.Ct. 1287 (1984); *Presbytery of Cimarron v. Westminster Presbyterian Church*, 515 P.2d 211 (Okla. 1973), *cert. denied*, 416 U.S. 961 (1974); *Presbytery of Beaver-Butler v. Middlesex Presbyterian Church*, Pa. Commw. Ct. , 471 A.2d 1271 (1984); *Presbytery of Seattle v. Rohrbaugh*, 79 Wash.2d 367, 485 P.2d 615 (1971), *cert. denied*, 405 U.S. 996 (1972).

> interpretation of the instruments of ownership would require the civil court to resolve a religious controversy, then the court must defer to the resolution of the doctrinal issue by the authoritative ecclesiastical body.

443 U.S. at 604. When a civil court determines to apply the "neutral principles" rule to resolve a church property dispute, it is required "to give effect to the result indicated by the parties [in the denominational constitution] provided it is embodied in some legally cognizable form." *Id.* at 606.

The Court of Appeals held in the instant case that under the decisions in *Serbian Eastern Orthodox Diocese v. Milivojevich* and *Kedroff v. Saint Nicholas Cathedral*, it was prohibited from granting the declaratory relief sought by respondents (a declaration that the First Presbyterian Church is independent of the United Presbyterian Church) because such a determination would require an impermissible "examination and interpretation of the authority of the Presbytery to permit or prevent withdrawal of a local church." (App. A-6). Having so held, the Court of Appeals in the first instance should have deferred to the Presbytery's determination and affirmed the decision of the Appellate Division granting petitioners' counterclaim and enforcing the authority of the administrative commission.

Instead, the Court of Appeals reinstated the order of the trial court dismissing respondents' request for declaratory relief and petitioners' counterclaim, but granting respondents an injunction against any interference by the United Presbyterian Church or the Presbytery of Albany in respondents' use of the local church property, thereby enjoining the United Presbyterian Church from exercising explicit provisions of its Constitution.

The Court of Appeals reasoned that it could rule on respondents' request for injunctive relief under the "neutral principles" rule without addressing what it rec-

ognized as being an impermissible question of which group is the lawful session under church law, because the vote to withdraw took place before the Presbytery replaced the session with an administrative commission. The fact that the congregational vote occurred prior to the Presbytery action has no significance, of course, unless the respondents could under church law unilaterally withdraw. Thus, although in denying respondents' request for declaratory relief the Court of Appeals held that it could not constitutionally inquire whether withdrawal is permitted under church law, in ruling on respondents' claim for injunctive relief the Court of Appeals assumed that respondents could withdraw and had done so prior to the Presbytery's replacing the session.

In applying the "neutral principles" rule, the Court of Appeals then refused to consider Section 15 on grounds that any inquiry into the meaning of that provision would entail an unconstitutional inquiry into doctrine and polity, (App. A-13), although the plain language of that section, read in connection with the sections granting the session exclusive authority over church property, is to place the presbytery, through its administrative commission, in control of the local property where, as here, the presbytery has acted to replace the session.[6] The result is a decision which denies the Presbytery and the administrative commission authority expressly granted in the Constitution and in effect reinstates the session that the Presbytery had replaced.[7] Having chosen to apply the "neutral

6. The dissent in *Jones v. Wolf* predicted that the "neutral principles" rule would produce the very problem seen in the Court of Appeals' opinion — that civil courts applying "neutral principles" would exclude from consideration so many provisions in church constitutions dealing with church polity that the result would be totally contrary to the form of church government chosen by the hierarchical denomination. 443 U.S. at 611-613 (Powell, J., dissenting).

7. The issue of which group constitutes the session of the local church was not present in *Jones v. Wolf* because the constitution of the Presbyterian Church in the United States, the denomination involved in *Jones v. Wolf* and in *Presbyterian Church in the United*

principles" rule, the Court of Appeals was required by the First Amendment to give effect, as stated in the majority opinion in *Jones v. Wolf*, to "the result indicated" in Section 15 by recognizing and enforcing the Presbytery's authority over the property at issue.[8]

The Court of Appeals also declined to consider Section 15 because, the Court stated, that provision is "located outside the property section of the Book of Order." (App. A-13). As a factual matter, the Court of Appeals is simply incorrect. There is no "property section" as such in the Book of Order applicable to this case. Section 15 is located in a chapter titled "Of the Session," which sets forth the composition and powers of sessions and also includes the sections stating the powers of sessions over property, quoted above. The provisions requiring written permission of the presbytery prior to the sale

States v. Mary Elizabeth Blue Hull Memorial Presbyterian Church, had no provision for presbyteries to replace local sessions with administrative commissions with full powers of session. (Nor did that constitution require presbytery approval prior to the sale, mortgaging, leasing, or encumbering of real property by particular churches, or give presbyteries control of the property of dissolved churches in all cases, as is provided in the Constitution of the United Presbyterian Church).

8. The Supreme Courts of California and South Dakota also have adopted the "neutral principles" rule and have awarded church property to members of local congregations that voted to withdraw from the United Presbyterian Church. *Presbytery of Riverside v. Community Church of Palm Springs*, 89 Cal. App.3d 910, 152 Cal. Rptr. 854, *cert. denied*, 444 U.S. 974 (1979); *Foss v. Dykstra*, 342 N.W.2d 220 (S.D. 1983). There are unreported decisions to the same effect by the Missouri Court of Appeals (now on appeal to the Missouri Supreme Court), the Ohio Court of Appeals, and an Illinois trial court. In none of those cases, however, was an injunction issued, or sought, against the denomination. The courts of Maryland, one of the first states to adopt the "neutral principles" rule, have consistently held in favor of the United Presbyterian Church in such disputes. *Babcock Memorial Presbyterian Church v. Presbytery of Baltimore*, 296 Md. 573, 464 A.2d 1008 (1983), *cert. denied*, 104 S.Ct. 1287 (1984); *Calvary Presbyterian Church v. Presbytery of Baltimore*, 39 Md. App. 405, 386 A.2d 357 (1978).

of local church property and providing for presbytery control of the property of dissolved churches are located in the chapter titled "Of Incorporation and Trustees," which deals with the formation and operation of nonprofit corporations to hold title to real property. As a matter of law, hierarchical denominations are denied the protection traditionally afforded them by the First Amendment if provisions of their constitutions are to be ineffective merely because they are not located in the section in which a particular civil court would have placed them. This is particularly so with respect to a Constitution like that of the United Presbyterian Church, which was drafted in 1789 and has been expanded by a series of amendments made over the past 200 years.[9]

The decision of the Court of Appeals enjoins the United Presbyterian Church and the Presbytery of Albany from exercising the power expressly given to the Presbytery in the Constitution of the United Presbyterian Church to replace the session of the First Presbyterian Church with an administrative commission with exclusive authority over the property of the First Presbyterian Church. This result denies the United Presbyterian Church the free exercise of religion guaranteed by the First Amendment, which this Court has held encompasses the power of hierarchical religious denominations "to decide for themselves, free from state interference, matters of church governance as well as those of faith and doctrine," *Serbian Eastern Orthodox Diocese v. Milivojevich*, 426 U.S. 696, 721-722 (1976), and is con-

9. The Court of Appeals also suggested that it did not consider Section 15 because sessions are described elsewhere in the Constitution as having purely "spiritual" power, that is, "ecclesiastical" power as opposed to civil penal power. (App. A-13). The Constitution states unequivocally, however, that the "ecclesiastical" powers of the church judicatories include power over property and over the affairs of the nonprofit corporations holding title to local church property. (Form of Government, Chapter XI, Sections 7, 8; Chapter XXXII, Sections 8, 11, 12).

trary to the First Amendment principles upheld by this Court in the *Serbian*, *Kedroff*, and *Kreshik* decisions, and in both the majority and dissenting opinions in *Jones v. Wolf*.

CONCLUSION

For all of the reasons set forth above, the United Presbyterian Church and the Presbytery of Albany respectfully urge this Court to grant a writ of certiorari and to reverse the decision below.

Respectfully submitted,

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APPENDIX

STATE OF NEW YORK
COURT OF APPEALS

No. 177

FIRST PRESBYTERIAN CHURCH
OF SCHENECTADY, *et al.*,

Appellants,

v.

UNITED PRESBYTERIAN CHURCH IN THE
UNITED STATES OF AMERICA, *et al.*,

Respondents.

(177) W. Jack Williamson, Greenville, Ala., pro hac vice, & Robert S. Trieble, Ballston Spa, for appellants.
Duncan S. MacAffer, Albany, for respondents.

SIMONS, J.:

This action involves a dispute between plaintiff First Presbyterian Church of Schenectady (First Church), and its denominational church organization, defendant The United Presbyterian Church in the United States of America (UPCUSA). It arose when First Church withdrew from the denominational church because of a disagreement over UPCUSA's financial support of radical political groups and individuals. Plaintiffs seek a declaration of their independent status and a permanent injunction preventing defendants from interfering with plaintiffs' use and enjoyment of the local church property. The issue is whether the court may resolve the dispute between the parties as it would any other or must, consistent with the prohibition against church/state entanglement contained in the First Amendment to the United States Constitution, defer to the determination of the denominational church. We

hold that it may resolve the dispute and that plaintiffs are entitled to injunctive relief. We therefore reverse the order of the Appellate Division dismissing the complaint.

Prior to January 24, 1977, First Church was a member of defendant Presbytery of Albany and defendant UPCUSA. UPCUSA exhibits a hierarchical or connectional form of church government, as differentiated from a congregational form. Under the hierarchical system, authority is vested in the first instance in the governing body of the local church — the Session— but its actions are subject to review and control by higher church bodies, in ascending order of authority, the Presbytery, the Synod and the General Assembly. To contrast, a congregational type church is independent of higher church authority and is self-governing.

First Church was organized in 1760, during the colonial period, and first incorporated on January 14, 1803, pursuant to Chapter 79 of the Laws of 1801. It became a member of the Presbytery of Albany in 1770 and UPCUSA's predecessor denomination in 1789. It retained that status until January, 1977. During the 1970's members of the church's 440 person congregation expressed discontent with UPCUSA and petitioned defendant Presbytery of Albany to be dismissed to another denomination. The request was denied. Instead, defendant Presbytery appointed an administrative commission to investigate the activities of the Session of First Church and to file a report containing its findings and recommendations. On January 24, 1977, at its annual meeting, First Church passed a resolution by a final vote of 334 to 4, severing its relations with defendants and retaining title to all real or personal property held by the church. Shortly thereafter, the commission submitted its report to the Presbytery advising removal of the Session of the First Church and appointment of another administrative commission with authority to function as a Session. The Presbytery attempted to exercise continued control over First Church by removing its ministers'

names from the church rolls but plaintiffs disregarded the orders of the commission and functioned as an autonomous body.

On April 16, 1977, plaintiffs, the church, its ministers and its governing session, commenced this action seeking a declaration that it was free to withdraw from defendants UPCUSA and Presbytery of Albany and a permanent injunction enjoining defendants from interfering with plaintiffs' use and enjoyment of church property. In their answer, defendants opposed the action and asserted a counterclaim seeking to permanently enjoin plaintiffs from refusing to obey its directives, orders and mandates in the management and control of the church.* Following a non-jury trial, plaintiffs were granted an order permanently enjoining defendants from interfering with the property but denying declaratory relief on the withdrawal issue. Defendants' counterclaim was dismissed.

A divided Appellate Division modified the judgment of Trial Term by reversing the grant of injunctive relief, dismissing the complaint and granting defendants' counterclaim. The three judge majority of the court, in an opinion by Justice Kane, relied upon the principle of deference by civil authorities in ecclesiastical matters and held that the court should not adjudicate the claims (see *Watson v. Jones*, 30 US [13 Wall.] 679). Presiding Justice Mahoney, concurred in part. He applied the "neutral principles of law" rationale of *Jones v. Wolf* (443 U.S. 595) to the facts and after doing so he held for defendants on their counterclaim for injunctive relief.

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* Plaintiffs had previously sued in the United States District Court for the Northern District of New York (Foley, J.) seeking identical relief. The requested relief was denied on the ground that the First Amendment precluded the court from ruling on the issues (*First Presbyterian Church of Schenectady v. United Presbyterian Church in the United States of America*, 430 F. Supp. 450). No claim is made that *res judicata* principles apply because of that determination.

Dissenting Justice Casey also applied the "neutral principles of law" rule but after analyzing the evidence he found that plaintiffs were entitled to injunctive relief and he therefore voted to affirm Trial Term's judgment.

Before this court, defendants characterize the present dispute as involving nothing more than a controversy over church policy and authority. To support their position they cite the allegations of plaintiffs' complaint objecting to UPCUSA's funding of various political and social groups and the refusal of plaintiffs to recognize the authority of the investigative commission. They contend that because this is a policy dispute the court must defer to the authority of the hierarchical church and avoid resolving the underlying question of property ownership; any other course would necessarily entangle it in church dogma and doctrine and thereby violate the First Amendment.

Plaintiffs, on the other hand, view this as an action concerning only the question of property ownership, a matter which can be resolved without violating the prohibitions of the First Amendment by application of the neutral principles of law rule. Applying neutral principles, plaintiffs conclude that they are entitled to ownership and control of the property because the deeds to the property are in the name of the local church or its trustees, the members of the local church provided all the funds for the purchase and maintenance of the church property, and the church constitution contained no express language granting a trust or proprietary right in favor of the UPCUSA.

Addressing these contentions, our analysis starts with a brief discussion of the general principles recognized by the courts in church-related disputes, then proceeds, in order, to a consideration of the deference rule, the neutral principles of law rule and the application of that rule to the facts of this case, and finally, to a consideration of implied trust principles.

I

The legal rules governing this dispute are derived from the Federal Constitution and have developed through a number of court decisions interpreting it.

The First Amendment, binding on the states through the Fourteenth, prohibits the making of "laws respecting an establishment of religion or prohibiting the free exercise thereof . . ." (US Const, 1st Amdt, 14th Amdt, *Cantwell v. Connecticut*, 310 US 296 [free exercise]; *Everson v. Board of Education*, 330 US 1 [establishment]). Consistent with these amendments civil courts are forbidden from interfering in or determining religious disputes. Such rulings violate the First Amendment because they simultaneously establish one religious belief as correct for the organization while interfering with the free exercise of the opposing faction's beliefs (*Maryland and Virginia Churches v. Sharpsburg Church*, 396 US 367, 369 [Brennan, J. concurring]; see Nowak, et al., Constitutional Law [2nd ed], Ch. 19 §IV, pp. 1071-1072; Tribe, American Constitutional Law, §14-12, pp. 870-872). The Constitution directs that religious bodies are to be left free to decide church matters for themselves, uninhibited by state interference (*Serbian Orthodox Diocese v. Milivojevich*, 426 US 696; *Kedroff v. St. Nicholas Cathedral*, 344 US 94, 116).

In *Serbian Orthodox Diocese* (*supra*), the issues concerned the identity of the lawful bishop of the Serbian Eastern Orthodox Diocese for the United States and the validity of the division of the American-Canadian Diocese into three Dioceses. A similar issue was presented in *Kedroff v. St. Nicholas Cathedral* (*supra*) when the court was asked to determine which of two competing church organizations, the Russian Orthodox Church in America or its Russian counterpart, had the power to appoint the prelate of the New York Diocese. The Supreme Court refused to resolve these questions notwithstanding that the control of church properties were

incidentally affected by the determinations. The court deferred to the ecclesiastical bodies because to do otherwise in an attempt to settle the property disputes would require the court to interpret church doctrine and involve it in matters which were predominantly religious disagreements.

These rulings controlled the trial court's disposition of plaintiffs' first demand for relief. To the extent that their complaint sought a declaration of their right to withdraw from the Presbytery, it was beyond the power of the court to grant that relief because the determination required an examination and interpretation of the authority of the Presbytery to permit or prevent withdrawal of a local church. And this was so even though the court might have found support for First Church's claim from the facts that the Church constitution is silent on the issue and there is apparent precedent for unilateral withdrawal by a local church and dismissal to another denomination. Thus, Trial Term denied plaintiffs' request for declaratory relief.

To the extent that plaintiffs' complaint seeks to enjoin defendants from interfering with its use of the property, however, the matter was properly entertained. At the time this action was before the court, the abstract issue of whether the local church had the right to withdraw from the Presbytery was not in the case (see *Presbytery of Riverside v. Church of Palm Springs*, 89 Cal. App. 3d 910, *cert. den.*, 444 US 974 and *Presbytery of Elijah Parish Lovejoy v. Jaeggi*, Mo. App. [decided January 31, 1984]). The Presbytery had not yet appointed a commission to replace the Church Session and plaintiffs had terminated their relations with the Presbytery and refused to recognize its authority. Thus judicial resolution of this property dispute will not cause the court to intrude into the religious area because it is not required to decide which of two competing bodies is the lawful Session with authority to control the property (cf, *Serbian Orthodox Diocese v. Milivojevich*, 426 US

696, *supra*). Inasmuch as "the State has a legitimate interest in resolving property disputes and a civil court is a proper forum for that resolution" a determination of the issue submitted to us is appropriate (see *Presbyterian Church v. Hull Church*, 393 US 440, 445; Note, Judicial Intervention in Church Property Disputes — Some Constitutional Considerations, 74 Yale Law Journal 1113, 1130). Indeed, the Supreme Court has specifically permitted State court resolution of church property disputes in these circumstances, i.e. when the denominational church has contested the right of the local church to withdraw, by holding that no federal question is presented by the State court's ruling with respect to a property dispute in favor of the withdrawing faction (see *Maryland and Virginia Churches v. Sharpsburg Church*, 396 US 367, *dsmg app*, 254 Md. 162).

II

Nevertheless, defendants contend, and the Appellate Division majority held, that even if the case is viewed as a contest over the right to control use of the property, the courts are bound to defer to the highest authority in the hierarchical church pursuant to the longstanding rule of *Watson v. Jones* (80 US 679, *supra*). *Watson*, decided before the First Amendment was held applicable to the states, dealt with a dispute between two rival factions of the Walnut Street Presbyterian Church over control of the church premises. The deed to the property as well as the charter of the local church, "subjected both property and trustees alike to the operation of the general church's fundamental laws." The minority faction seized control of the church and in the resulting litigation, the Kentucky courts ruled in its favor. The majority faction then brought an action in federal court which sustained their claim and on appeal the United States Supreme Court affirmed. It noted that the local congregation was a member of a larger Presbyterian Church and subject to its authority and because the General Assembly had decided in favor of the ma-

jority faction, the courts were bound by that decision. Justice Miller speaking for the court stated that:

> "[W]here the religious congregation or ecclesiastical body holding the property is but a subordinate member of some general church organization in which there are superior ecclesiastical tribunals with a general and ultimate power of control more or less complete [and] . . . whenever *the questions of discipline, or of faith, or ecclesiastical rule, custom or law have been decided by the highest of these church judicatories to which the matter has been carried, the legal tribunals must accept such decisions as final, and as binding on them.* . . . " 80 U.S. (13 Wall) at 722, 727 (emphasis added).

This language forms the basis for the "complete deference" standard of review. It provides that all members of hierarchical organizations submit themselves to the decision-making authority of the church in ecclesiastical matters, excluding civil court involvement "in the absence of fraud, collusion or arbitrariness" (*Gonzales v. Roman Catholic Archbishop*, 280 US 1, 16).

Although apparently absolute in scope, the *Watson* decision did not pass on whether the courts could decide exclusively property issues in litigation involving a hierarchical church (see Note, Judicial Intervention in Church Property Disputes — Some Constitutional Considerations, 74 Yale Law Journal 1113, 1120-1121, *supra*). That question was answered in *Presbyterian Church v. Hull Church* (393 US 440, *supra*). On facts analogous to *Watson*, the court recognized that church property disputes implicate the establishment and free exercise clauses of the First Amendment but held that the courts are free to decide such disputes if they can do so without resolving underlying controversies over religious doctrine. It endorsed the "neutral principles of law" analysis which has been developed for use in all property disputes and which can be applied without

"establishing" churches to which the property is awarded (*Presbyterian Church v. Hull Church, supra*, at p. 449). This rule was later restated and approved in *Jones v. Wolf* (443 US 595, *supra*). Thus even though members of a local group belong to a hierarchical church, they may withdraw from the church and claim title to real and personal property, provided that they have not previously ceded the property to the denominational church (Nowak, et al. Constitutional Law, Ch. 19, §IV, p. 1075). The fact that the Presbytery is part of a hierarchical body which may have determined the property dispute adversely to plaintiffs does not bind this court if it proves possible to decide the controversy through application of "neutral principles of law."

III

The neutral principles of law analysis has not been explicitly adopted by this state, although we applied the rule in *Avitzur v. Avitzur* (58 N.Y.2d 108, 114-115, *cert. den.*, US , [civil court may enforce the secular terms of a religious marriage contract (Ketubah) through application of ordinary principles of contract law]). We do so in this action. Applying that analysis, we determine that the property shall remain in the control of plaintiff First Church.

In *Jones v. Wolf*, 164 members of the Vineville Presbyterian Church voted to separate from the Presbyterian Church in the United States (PCUS), while 94 members opposed such action. The majority then united with another denomination and retained possession of local church property. The Presbytery of Augusta-Macon appointed a commission to investigate the dispute and that commission ultimately ruled that the minority faction was the "true congregation" of the local church. Members of the minority faction then sued in state court seeking declaratory and injunctive orders establishing their right to exclusive possession and use of the local

church property. Applying "neutral principles of law," the trial court granted judgment for the majority and the Georgia Supreme Court affirmed. Although the Supreme Court approved the rationale of the state courts it vacated the judgment and remanded the case for further proceedings because they had failed to address the additional complicating factor that the congregation was itself divided. That problem is absent in this case because the four members who did not wish to withdraw from the Presbytery have not contested the action of the overwhelming majority of the church membership, and without the dissenters' involvement, the case may properly be viewed as no more than a dispute between the general church and the local congregation.

In *Jones* the Supreme Court held that a state court is entitled to adopt a "neutral principles of law" analysis as a means of resolving church property disputes, but it is not required to do so. Judicial deference to a hierarchical organization's internal authority remains an acceptable alternative mode of decision. We choose to recognize the neutral principles of law analysis and we apply it here. We do so in the belief that when properly applied it avoids drawing civil courts into religious controversies by focusing on evidence from which the court may discern the objective intention of the parties and it also permits the state to protect its legitimate interests in securing titles to property. The rule is explicitly designed to achieve that end (see *Jones v. Wolf*, 443 US 595, *supra*, p. 603-604). It is completely secular in operation, it is flexible enough to accommodate all forms of religious organizations and it relies upon well-established principles of law familiar to judges and lawyers. It also provides predictability so that religious organizations may order their affairs to account for its application. Moreover, we agree with those who have observed that the doctrine is preferable to deference because it does not prefer one group of disputants to another. The deference approach assumes that the local church has

relinquished control to the hierarchical body in all cases, thereby frustrating the actual intent of the local church in some cases. Such a practice, it is said, discourages local churches from associating with a hierarchical church for purposes of religious worship out of fear of losing their property and the indirect result of discouraging such an association may constitute a violation of the free exercise clause. Additionally, by supporting the hierarchical polity over other forms and permitting local churches to lose control over their property, the deference rule may indeed constitute a judicial establishment of religion (see Adams and Hanlon, *Jones v. Wolf*, Church Autonomy and the Religion Clauses of the First Amendment, 128 U. Pa. L. Review 1291, 1337).

In applying neutral principles, the focus is on the language of the deeds, the terms of the local church charter, the state statutes governing the holding of church property, and the provisions in the constitution of the general church concerning the ownership and control of church property (*Jones v. Wolf*, 443 US 595, supra, p. 603, citing *Maryland and Virginia Churches v. Sharpsburg Church*, 396 US 367, 368, *dsmg. app.*, 254 Md. 162). The court must determine from them whether there is any basis for a trust or similar restriction in favor of the general church, taking special care to scrutinize the documents in purely secular terms and not to rely on religious precepts in determining whether they indicate that the parties have intended to create a trust or restriction. The trial court correctly applied these principles in ruling in plaintiffs' favor.

First, under familiar property law principles, plaintiff church held record title to the property free from any competing interests. The deeds by which plaintiff church acquired the several parcels of realty all named First Church or its trustees as grantees, their operative provisions contained no forfeiture or reversion clauses in favor of the various grantors or UPCUSA and the record does not indicate that any of the property was acquired by

restrictive gift. None of the deeds include language of trust or restriction vesting a present or future interest in the Albany Presbytery or the UPCUSA.

Turning to the local charter, plaintiff church apparently filed two certificates of incorporation, the first in 1803 and the second in 1809 and these certificates are silent on the question of how the property is to be owned.

Next, state law provides that property disputes involving the Presbyterian Church are controlled by section 69 (subd 3) of the Religious Corporation Law. It requires that trustees of the local church govern the property in accordance with the constitution of the UPCUSA (see e.g., *Trustees of Presbytery of New York v. Westminster Presbyterian Church of West 23rd Street*, 222 NY 305). However, these provisions of the Religious Corporation Law are not applicable to churches incorporated prior to 1828 if the statute is inconsistent with the law as it existed at the time of incorporation, unless the church reincorporates after 1828 or the trustees determine by resolution that the provisions of the Religious Corporation Law shall apply (Religious Corporation Law, §24). The exception governs this case inasmuch as the law in 1803, the date of incorporation, is inconsistent with section 69 (see *Matter of First Presb. Soc. of Buffalo*, 106 NY 251, 254), there was no reincorporation by plaintiff church subsequent to 1828 and the trustees never resolved to make the statute applicable. Indeed the fact that plaintiff church, acting through its trustees, chose not to bring itself within the scope of section 69, relying instead upon prior law giving it undisputed ownership, is evidence that ownership rests with plaintiffs.

The last item to be considered is the constitution of the denominational church, known as the Book of Order. In examining it, the court may look only to provisions relating to property and it must interpret them in a secular light. The Book contains no provision which creates an express trust in favor of the UPCUSA. But defendants rely upon the wording in two chapters to

support their view that the denominational church is intended to retain control of local church property in the event of a schism. In part II, chapter XXXII, entitled "Of Incorporation and of Trustees," section 62.11 provides that whenever a local church is dissolved, "such property as it may have * * * shall be held * * * as the presbytery may direct in conformity with the Constitution of the United Presbyterian Church in the United States of America." That provision is inapplicable because plaintiff church is not undergoing a dissolution or extinction. Defendants also refer the court to the provisions in chapter XI of part II, entitled "Of the Session". Section 41.07 of chapter XI provides that the "session", which is the governing body of the local church, has "exclusive authority over the uses to which the church buildings and properties may be put * * *". (See, also, Book of Order, ch. XI, §41.08; ch. XXXII, §62.08.) Section 41.15 authorizes the regional governing body within UPCUSA, the "presbytery", to appoint a "commission" to take the place of the local church's "session", with the full powers of the "session", in the event "the session of a particular church is unable or unwilling to manage wisely the affairs of its church". These provisions, relied upon by the concurring Justice at the Appellate Division as establishing an intent to create a beneficial interest in the denominational church, are located outside the property section of the Book of Order. They deal with church government and relate only indirectly to the control of property. They set forth the mechanism of church government in the event of a church dispute and any inquiry into their meaning by a court is constitutionally foreclosed because it would require the court to choose between the insurgent Session and the commission or "replacement Session." Moreover, the authority of the Session to direct control of property in such a dispute is belied by the constitution itself in view of the fact that other sections of the Book ascribe to the Session power which is purely spiritual (Part II, Chapter V, section

35.03). In view of this ambiguity, these provisions should be discounted, leaving nothing in the Book of Order to support defendants' position.

IV

Finally, we address the argument that in the absence of a specific understanding or agreement preserving a separate entity and expressing an intention to withhold property, it is presumed that the local church intended to dedicate the property to the purposes of the larger body by voluntarily merging itself with it (see *Mills v. Baldwin*, 263 So.2d 2 [Fla.], vacated and remanded 443 US 914). This represents an application of the implied trust doctrine which we have recognized in other contexts (see *St. Joseph's Hospital v. Bennett*, 281 NY 115). It is not applicable here.

There are three types of implied trusts in church property disputes: (1) an implied trust for the benefit of those members of a divided congregation who adhere to the principles of the founders of the religion (see *Attorney General v. Pearson*, 36 Eng Rep 135); (2) an implied trust for the denominational church and (3) an implied trust for the members of the congregation (see Note, Judicial Intervention in Disputes Over the Use of Church Property, 75 Harv. L. Rev. 1142). Only the first two types concern us. An implied trust for the members of the congregation, by definition, would not benefit this denominational church.

The first type of trust must be rejected where it leaves the courts in the position of determining what the original principles of the church were — the inquiry into doctrine precluded by *Presbyterian Church v. Hull Church* (393 US 440, *supra*) and earlier state decisions (see *Gram v. Evangelical Lutheran Soc.*, 36 NY 1; *Petty v. Tooker*, 21 NY 267; *Robertson v. Bullions*, 11 NY 243; See Tribe, American Constitutional Law, §14-12, pp. 872-875). Nor can there be an implied trust of the

second type, for to establish such a trust there must be a sufficient manifestation of the intention to do so. (Restatement Second of Trusts, Section 22). First Church acquired the property on its own without any funding assistance from the denominational church and there is no evidence that it intended to hold the property in trust. The evidence is just the other way. First Church took no action from which an intent to create a trust may be implied and it had no notice or knowledge that the Presbytery or UPCUSA claimed that an implied trust existed prior to this dispute. The trustees of First Church failed to pass a resolution bringing the church within the statutory trust provision of section 69 of the New York Religious Corporation Law and no other commitment in writing was undertaken to create one (see *Presbytery of Riverside v. Community Church of Palm Springs*, 89 Cal. App. 3d 910, *supra*). Additionally, not only does the Book of Order contain no provision of trust, but in 1929 UPCUSA proposed an amendment to the church rules establishing a trust of all church properties for the denominational church and the amendment failed to receive the necessary votes of the Presbyteries for passage. The mere fact of First Church's association with the denominational body, even an association lasting 200 years, does not by itself support a finding that an implied trust was created.

Accordingly, the order of the Appellate Division, insofar as appealed from, should be reversed, without costs, and the judgment of Trial Term reinstated.

* * * * * * * * * * *

Order, insofar as appealed from, reversed, without costs, and judgment of Supreme Court, Saratoga County, reinstated. Opinion by Judge Simons. Chief Judge Cooke and Judges Jasen, Jones, Wachtler, Meyer and Kaye concur.

Decided May 15, 1984.

STATE OF NEW YORK SUPREME COURT
SARATOGA COUNTY

FIRST PRESBYTERIAN CHURCH OF SCHENECTADY, HERBERT S. MEKEEL, Individually and as Moderator of the Session of the First Presbyterian Church of Schenectady, New York, MICHAEL R. ALFORD, Individually and as Associate Minister of the First Presbyterian Church of Schenectady, New York, ROBERT V. KLINT and WILLIAM T. LANIER, Individually and as members of the Church Session of the First Presbyterian Church of Schenectady, New York,

DECISION

Plaintiffs

-against-

UNITED PRESBYTERIAN CHURCH IN THE UNITED STATES OF AMERICA and PRESBYTERY OF ALBANY,

Defendants.

APPEARANCES:

Simon, Trieble & Werner, attorneys for plaintiffs (William J. Werner, of counsel, and W. Jack Williamson, of counsel)

Duncan S. MacAffer, attorney for defendants

AMYOT, J.

This action which seeks declaratory and injunctive relief was tried before the court without a jury.

From the proof, the pleadings and the stipulations agreed to by the parties the following factual background is established.

The defendant United Presbyterian Church in the United States of America (UPCUSA), an unincorporated association, is a connectional or hierarchical church with ecclesiastical authority and control ascending through four judicatories — the local Session, the district Presbytery, the regional Synod and the national General Assembly — as defined in the Book of Order which is part of the constitution of the church and which regulates its form of government.

The defendant Presbytery of Albany is the first of the judicatories in ascending order above the Session of the plaintiff church. It exercises such authority and control, as defined in the Book of Order, over local churches within its geographical jurisdiction.

The plaintiff First Presbyterian Church of Schenectady is a corporation, the spiritual government of which is maintained by its Session. It is within the geographical district of the defendant Presbytery of Albany. It was formed as an unincorporated religious association in 1760 and by 1770 it was a member of the Presbytery of New York. Thereafter it was incorporated in 1803. The only change in the corporate identity since that time was an amendment to the articles of incorporation filed in 1809 which changed the corporate name but made no other significant alterations. Since its founding it has subscribed to and been associated with the Presbyterian doctrine.

Prior to January 1977 discontent developed within the plaintiff church because of UPCUSA's support of positions and activities thought to be violative of fundamental beliefs and principles of Presbyterianism. The local church therefore petitioned the defendant Presbytery to be dismissed to another denomination. That pe-

tition was denied in March of 1976 and thereupon the defendant Presbytery, pursuant to the Book of Order, established an administrative commission to investigate conditions, at the plaintiff church. Before any action was taken by that commission, the plaintiff corporation, at its annual meeting on January 24, 1977, adopted a resolution "that it hereby and immediately severs relations with the Presbytery of Albany, United Presbyterian Church in the United States of America, while retaining title to all its properties, real and personal, which it presently occupies or administers and which are held in its name."

Thereafter on February 1, 1977 the administrative commission reported and recommended that the Session of the plaintiff church be supplanted. The defendant Presbytery then directed the Session of the plaintiff church "to cease to act until directed otherwise by the Presbytery", and established another "administrative commission of three ministers and two ruling elders with the full power of the Session of the First Presbyterian Church of Schenectady, New York."

Although appeal from those directives of the defendant Presbytery was authorized within the hierarchical structure, no such review was sought by the plaintiff church or by anyone eligible to act on its behalf. Instead, none of the orders or directives of the commission have been obeyed by the plaintiff church and it continues to function without acceptance of or acquiescence in the authority of the defendants.

From time to time since its formation the plaintiff church has acquired real and personal property. The deeds by which such realty was transferred to the local church identified the grantees by slightly different names* but it is conceded that in each instance the

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* Grantees in these deeds are varyingly designated as "the Trustees of the First Presbyterian Church in the City of Schenectady" or "the Trustees of the First Presbyterian

plaintiff church was the intended grantee and title passed to the local church. None of the deeds provided for reversion or forfeiture for any reason and none referred to any other ecclesiastical organization or denomination. No limitation was placed on the grantee's ownership and no trust was established by any of the deeds.

Neither of the defendants nor their predecessors has paid for or contributed to the cost or maintenance of the plaintiff's property. The charter of the plaintiff church does not establish any trust or interest in locally owned property for the benefit of any other church judicatory and none is provided for, directly or by inference, in the constitution of UPCUSA nor under New York State Law.

The plaintiff now seeks to permanently enjoin the defendants from interfering with its lands, buildings, moneys and other properties. Judgment is also sought declaring "that the plaintiff church is a separate religious corporation independent of the defendants and free to manage its own affairs without interference or control by the defendants or any of their agencies or subdivisions, and that the defendants have no rightful claim, in law or equity, to the lands, buildings, moneys and other properties, real and personal, of the plaintiff church."

The defendants contend that the court is without jurisdiction to determine the issues presented by the pleadings since they deal with religious doctrines or ecclesiastical administration and therefore the court must accept and enforce the decisions of the authorized judicatories within the denominational hierarchy. The defendants seek to permanently enjoin the plaintiff from interfering with the administrative commission's management and control of the religious, temporal and civil affairs of the First Presbyterian Church of Schenectady and from interfering with the exercise of defendants'

Church of Schenectady, New York" or "First Presbyterian Church of Schenectady, N.Y." or "the First Presbyterian Church of Schenectady."

authority, control and management over the lands, buildings and property of the plaintiff church.

As applied to hierarchical churches, it is well-settled that civil courts must accept as binding the decisions of the internal judicatories in all matters of ecclesiastical rule, custom or law, discipline or faith. (*Watson v. Jones*, 13 Wall 679, 20 L Ed 666.) Carved out of that general proposition, however, is the well-recognized rule that disputes over the ownership or control of church property are to be decided by civil courts under neutral principles of law so long as adjudication of those disputes does not depend on the secular court's determination of an underlying ecclesiastical controversy over doctrine or practice. (*Presbyterian Church in the United States v. Mary Elizabeth Blue Hull Memorial Presbyterian Church*, 393 US 440, 21 L Ed 2d 658.)

The core issue to be determined in connection with the application of the plaintiffs for a permanent injunction is the legal ownership of property now held in the name of the plaintiff church. Resolution of that issue does not depend on interpretation of church polity or questions of faith, doctrine or practice. It is purely a legal issue to be determined on principles of secular law. Under such law title to the property clearly is vested in the plaintiff church without condition or limitation.

The plaintiffs, therefore, are entitled to the permanent injunction prayed for in the complaint.

However, the application for judgment declaring that the plaintiff church is independent of the defendants' authority and control involves different legal principles.

It is conceded that prior to the adoption of the resolution to sever from the defendants, the plaintiff church was a constituent member of UPCUSA subject to the authority of superior judicatories. It voluntarily chose to associate with and become an established member of the general church. It has not been dissolved nor declared extinct.

Although the defendant Presbytery has denied the petition of the plaintiff church for dismissal to another denomination, neither defendant has ruled on the effectiveness of the plaintiff church's attempt unilaterally to sever from the general church and from the jurisdiction of the defendant Presbytery.

As to churches which are subject to the Religious Corporations Law, it is established in this state that by secession a constituent church cannot terminate its relationship with the general church and thus become independent. (*Trustees of Presbytery of New York v. Westminster Presbyterian Church of West Twenty-Third Street*, 222 NY 305, 313-315.) Here involved, however, is a local church incorporated prior to 1828 and by section 24 of the Religious Corporations Law it is expressly excepted from the provisions of that law which are inconsistent with or in derogation of its rights under the law pursuant to which it was formed. The plaintiff church was incorporated as an independent church under chapter 79 of the Laws of 1801 pursuant to which broad and unencumbered rights and powers were given to the trustees in the management and control of temporalities owned by the church. The provisions of the Religious Corporations Law which limit and regulate the powers and duties of the trustees with regard to such property (Religious Corporations Law, §5) are not binding on the plaintiff church and as to its property they establish no title or control in the defendants.

The rights acquired by the plaintiff church under the laws of its incorporation remain inviolate, (See *People ex rel Sturges v. Keese*, 27 Hun 483), and unless the right to ownership and control of its property has been forfeited by the voluntary association with and submission to the authority of the defendants, those rights still obtain and the defendants have no claim on the temporalities of the plaintiff church.

Whether the plaintiff church is "independent of the defendants and free to manage its own affairs without

interference or control by the defendants or any of their agencies or subdivisions" depends upon whether they have complied with church law in regard to such matters. Experts sworn by both sides testified to conflicting opinions in this regard. Whether church rules or custom permit a constituent member without permission to withdraw from the parent body is to be determined under church law interpreted by church courts. It is a matter of church government to be resolved within the ecclesiastical structure and that resolution must be accepted by secular courts. For this court to determine whether the plaintiff church is independent of the defendants' authority and control would require an interpretation of the rules by which the general church manages and regulates its branches and to evaluate the right of a local church unilaterally to separate itself from the parent body. In such matters of internal government secular courts must abide by the determinations of spiritual tribunals constituted within the religious organizations for such purposes. (*See Jones v. Wolf*, 443 US 595, 609, 61 L Ed 2d 775, 788; *Kedroff v. St. Nicholas Cathedral*, 344 US 94, 97 L Ed 120.)

> "In short, the First and Fourteenth Amendments permit hierarchical religious organizations to establish their own rules and regulations for internal discipline and government, and to create tribunals for adjudicating disputes over these matters. When this choice is exercised and ecclesiastical tribunals are created to decide disputes over the government and direction of subordinate bodies, the Constitution requires that civil courts accept their decisions as binding upon them." (*Serbian Orthodox Diocese v. Milivojevich*, 426 US 696, 724-725, 49 L Ed 2d 151, 171.)

Leaving to the ecclesiastical courts the determination of the question of the status of the plaintiff church in the denominational scheme does not dilute or in any

way affect the ownership of property belonging to the plaintiff church. Instead, it merely preserves the integrity of the government and authority of the general church over its subordinate branches in matters of church polity without interference by civil tribunals.

Plaintiffs' action for a declaratory judgment is dismissed.

The counterclaim of the defendants is dismissed.

Judgment accordingly may enter.

Dated this 12th day of February, 1981 at Ballston Spa, N.Y.

J. Ramond Amyot, J.S.C.

FIRST PRESBYTERIAN CHURCH
OF SCHENECTADY, et al.,
Respondents,

v.

UNITED PRESBYTERIAN CHURCH IN THE
UNITED STATES OF AMERICA, et al.,
Appellants.

SUPREME COURT,
APPELLATE DIVISION, THIRD DEPARTMENT

March 10, 1983

OPINION FOR MODIFICATION

KANE, J.

This matter concerns the dispute between a local church and its regional Presbytery over the power of an administrative commission appointed by the Presbytery to control the affairs and property of the local church. At issue is the extent of this court's jurisdiction to determine intrachurch disputes under Federal and State law and, if exercised, the degree of deference required in effectuating such determinations. Of necessity, a brief recitation of the facts and a history of plaintiff church is required.

The First Presbyterian Church of Schenectady was founded as an unincorporated religious association in 1760 during the days of the Colonial Governor. It was incorporated in the State of New York pursuant to Chapter 79 of the Laws of 1801 on January 14, 1803, and except for a change of name on January 20, 1809, there has been no change in its corporate status since that date. During this entire period up to January, 1977, it subscribed to the Presbyterian doctrine, and recognized

and adhered to the authority of the regional Presbytery over its congregation and property. However, prior to January, 1977, as a result of disenchantment and discontent with what it considered the policies and activities of defendant United Presbyterian Church in the United States of America (UPCUSA), plaintiff petitioned defendant Presbytery of Albany to be dismissed to another denomination. The request was denied and an administrative commission was instructed to investigate the actions of the local Session, the governing body of plaintiff church elected by the members of its congregation. However, before said commission rendered its report, plaintiff church, on January 24, 1977, at its annual meeting, adopted a resolution severing relations with defendants and retaining title to all property both real and personal then held or administered by it. On February 1, 1977, the investigating commission made its report to the Presbytery, recommending removal of the local Session as the governing body of the First Presbyterian Church of Schenectady and the appointment of another administrative commission with full power of the Session to act in its place. The Presbytery acted in accordance with the recommendation and, at the same time dissolved the pastoral relationship of plaintiffs Mekeel and Alford with the local church and deleted their names from all its rolls. There was no administrative appeal taken by plaintiff church or any of its members through the hierarchy of defendants following this action; rather, plaintiffs chose to ignore or disobey directives of the commission and pursued their functions without acceptance of or submission to the authority of defendants. Thereafter, on February 17, 1977, plaintiff church instituted an action against UPCUSA in the United States District Court for the Northern District of New York, seeking a declaratory judgment of independence from UPCUSA and injunctive relief restraining it from interfering with plaintiff's independence. By decision dated March 11, 1977, this relief was denied, *inter*

alia, on the grounds the dispute was subject to resolution under ecclesiastical law and not a subject for judicial inquiry (*First Presbyterian Church of Schenectady v. United Presbyterian Church in the United States of America*, 430 F. Supp. 450).

The instant action was then commenced seeking the same type of relief. An application for temporary injunctive relief was denied by Special Term in a decision dated July 18, 1977, upon much the same grounds as in the District Court Action. However, upon trial before the court without a jury of this action and the counterclaim interposed by defendants seeking affirmative injunctive relief on behalf of its administrative commission, Trial Term ultimately concluded that it could not declare the status or powers of the respective parties without interpreting church law, and thus impermissibly trespass into the ecclesiastical field, but, that it was within its power to resolve the questions of title and possession of church property by applying the "neutral principles of law" concept as enunciated in *Jones v. Wolf*, 443 U.S. 595, 99 S.Ct. 3020, 61 L.Ed.2d 775. Accordingly, plaintiffs were granted the injunctive relief they sought, and defendants' counterclaim was dismissed.

On this appeal, defendants contend that the issues in this matter must be decided by applying the long-standing rule of *Watson v. Jones*, 80 U.S. 679, 13 Wall. 679, 20 L.Ed. 666 and its progeny, which requires that secular courts give deference to the authority of a hierarchical church in a dispute involving matters of intra-church policy, power and property. This being the case, defendants assert that once Trial Term looked behind the provisions of the Constitution of UPCUSA (The Book of Order), it violated this rule, which was reiterated in *Jones v. Wolf* (*supra*), upon which it relied heavily. In support of their position, defendants contend that throughout its history, plaintiff church has acquiesced and followed all of the mandates, rules, regulations and assessments of UPCUSA and, thus, by this action has

voluntarily subjected itself to the guidance and control of the national denomination. Moreover, defendants argue that as the use and benefit of church property is governed and controlled by the organic law of the church as provided in its Book of Order, there is, therefore, vested in defendants a beneficial interest in this property without affecting the legal title to that property. Accordingly, since the Book of Order spells out in detail the procedures to be followed in the event of a dispute such as the one at hand, upon compliance with those procedures, defendants are entitled to the aid of a court of equity to enforce any ecclesiastical decree imposed against a congregation (*Westminster Presbyterian Church of West Twenty-Third Street v. Trustees of Presbytery of New York*, 211 N.Y. 214, 105 N.E. 199).

Plaintiffs on the other hand, contend that the clear holding in *Jones v. Wolf* (*supra*) and cases that have followed it in other jurisdictions, reject the argument that denominational replacement of a local session by an administrative commission can be enforced in a secular court of equity. Rather, plaintiffs assert that this case is the classic dispute as to the legal ownership of property to which the "neutral principles of law" rule may be applied, and that Trial Term properly applied that rule to the facts of this case.

[1, 2] We are called upon to resolve what seems to be a clear-cut issue. However, resolution of that issue is far from simple. As a first step, we conclude that plaintiff church is not subject to any of the pertinent provisions of the Religious Corporations Law of the State of New York. Having been incorporated prior to January 1, 1828, the church is possessed of all the rights and privileges which it was accorded at the time of the original incorporation (L.1896, ch. 336, now Religious Corporations Law, §24). Next, we must determine whether this dispute may be resolved by applying the "neutral principles of law" analysis to this factual setting, without contravening established principles of separation of church

and State. We think not. Resolution of the controversy must depend, ultimately, on considerations of religious doctrine and practice. It is not dependent "exclusively on objective, well-established concepts of trust and property law familiar to lawyers and judges" (*Jones v. Wolf, supra,* 443 U.S. p. 603, 99 S.Ct. p. 3025; see, also, *Avitzur v. Avitzur*, 58 N.Y.2d 108, 459 N.Y.S.2d 572, 446 N.E.2d 136 (1983)).

While the use and occupancy of property may depend on the result of this litigation, the genesis of the dispute is rooted in the exercise of power by a hierarchical church according to its Book of Order. Applying "neutral principles of law", as suggested by plaintiffs, will, in our view, inexorably entangle this court in a religious controversy. Title to property is not the source of the dispute; it is the beneficial use and application of that property which is at issue. Any determination of that issue by this court would be a direct intrusion into the area of religious doctrine, practice and administration. In such circumstances, we must defer to the authority of the ecclesiastical body (*Serbian Eastern Orthodox Diocese v. Milivojevich,* 426 U.S. 696, 96 S.Ct. 2372, 49 L.Ed.2d 151.)

[3] This does not mean that the court may not afford assistance to church authority in the enforcement of its decrees, for otherwise the controversy may never be resolved. Defendant Presbytery has the right to proceed in a court of equity to enforce its ecclesiastical decrees against the congregation of plaintiff church (*Trustees of Presbytery of New York v. Westminster Presbyterian Church of West 23rd Street*, 222 N.Y. 305, 318-319, 118 N.E. 800); cf. *Avitzur v. Avitzur, supra.* This relief should be granted to defendants in accordance with their counterclaim.

The judgment should be modified, on the law and the facts, by reversing so much thereof as granted plaintiffs injunctive relief and dismissed the counterclaim; the complaint dismissed, and judgment directed to be

entered in favor of defendants on their counterclaim, permanently enjoining plaintiffs from failing to obey the directives, orders and mandates of the administrative commission in the management and control of plaintiff church, and, as so modified, affirmed.

MAHONEY, Presiding Justice (concurring).

In my view, Trial Term properly decided that use of the "neutral principles of law" test was appropriate for resolution of the issue regarding title and possession of church property. I thus reject the majority's finding that use of this test will contravene established principles of separation of church and State.

Having concluded that Trial Term properly adopted the "neutral principles of law" test first permitted by the United States Supreme Court in *Presbyterian Church v. Mary Eliz. Blue Hull Church*, 393 U.S. 440, 449, 89 S.Ct. 601, 606, 21 L.Ed.2d 658, I disagree with the conclusion reached by Trial Term upon application of that test. As stated by the Supreme Court, use of the "neutral principles of law" test in settling local church property disputes requires examination of the language of the deeds, the terms of the local church charters, the State statutes governing the holding of church property and the provisions in the constitution of the general church concerning the ownership and control of church property (*Jones v. Wolf*, 443 U.S. 595, 603, 99 S.Ct. 3020, 3025, 61 L.Ed.2d 775).

The only one of the above-enumerated sources which can arguably give the general church the right to control the property at issue in this lawsuit is the constitution of the United Presbyterian Church in the United States of America (UPCUSA). A major portion of this constitution, entitled the Book of Order, deals with the form of governmental structure within the general church and was made a part of the record in this case. Review of that document reveals several sections which support the general church's claim of control over the local church's property.

Section 41.07 of chapter XI provides that the "session", which is the governing body of the local church, has "exclusive authority over the uses to which the church buildings and properties may be put * * *". (See, also, Book of Order, ch. XI, §41.08; ch. XXXII, §62.08.) Section 41.15 of the same chapter authorizes the regional governing body within UPCUSA, the "presbytery", to appoint a "commission" to take the place of the local church's "session", with the full powers of the "session" upon a determination that "the session of a particular church is unable or unwilling to manage wisely the affairs of its church". This section was utilized by the Presbytery of Albany in this case following its investigation in the beginning of 1977 which led to appointment of an administrative "commission" with the full power of the "session" to act in its place.

A secular analysis of these provisions of UPCUSA's constitution, which were not present in the Presbyterian constitution being reviewed in *Jones v. Wolf* (*supra*), compels me to conclude that the general church and its regional Presbytery are entitled to prevail on their counterclaim whereby they seek to permanently enjoin plaintiffs from interfering with the management and control of the affairs and properties of the local church by the administrative "commission".[1]

In so ruling, I am not unaware of the difficulties which accompany use of the "neutral principles of law"

1. It should be noted that another provision in the Book of Order dealing with the authority to control church property, section 62.11 of chapter XXXII, is not applicable to this case. That section empowers the regional "presbytery" to control local church property whenever the local church is "formally dissolved by the presbytery, or has become extinct* * *", two conditions which are conceded not to have occurred in the instant case. Additionally, it should be noted that reliance on an amendment to the Book of Order made in 1981 (ch. XLII, §72.02), wherein it is explicitly stated that property owned by the local churches is held in trust for the use and benefit of UPCUSA, is not germane to the facts of this case which occurred in 1977.

test in resolving this matter. In relying on the above-mentioned provisions within the Book of Order to support the general church's right to control the property owned by the local church, religious doctrine and practice may appear to be involved since the decision by the Presbytery of Albany to replace the local church's "session" with an administrative "commission" was premised on a finding that the local governing body "is unable or unwilling to manage wisely the affairs of its church" (Book of Order, ch. XI, §41.15). This appearance of civil court entanglement in religious questions is illusory.

> [T]here may be cases where the deed, the corporate charter, or the constitution of the general church incorporates religious concepts in the provisions relating to the ownership of property. If in such a case the interpretation of the instruments of ownership would require the civil court to resolve a religious controversy, then the court must defer to the resolution of the doctrinal issue by the authoritative ecclesiastical body.

(*Jones v. Wolf*, 443 U.S. 595, 604, 99 S.Ct. 3020, 3025, 61 L.Ed.2d 775, citing *Serbian Eastern Orthodox Diocese v. Milivojevich*, 426 U.S. 696, 709, 96 S.Ct. 2372, 2380, 49 L.Ed.2d 151.)

Civil courts *must*, therefore, be bound by the ecclesiastical determination made within the governmental framework of the general church that the local "session" is not wisely managing its own affairs. That being the case, civil courts may then read the constitution in a secular manner which will not offend any constitutional principles.

Accordingly, I would modify the judgment entered upon Trial Term's decision by (1) affirming that portion which dismissed plaintiffs' request for declaratory relief, (2) reversing that portion which granted plaintiffs' request for injunctive relief, and (3) reversing that portion

which dismissed defendants' counterclaim for injunctive relief.

CASEY, Justice (dissenting).

In my view, application of the "neutral principles of law" approach to resolution of the intrachurch property dispute at issue here requires affirmance of Trial Term's judgment and, therefore, I dissent.

The State has a legitimate interest in resolving property disputes, and a civil court is a proper forum for that resolution (*Presbyterian Church v. Mary Eliz. Blue Hull Church*, 393 U.S. 440, 445, 89 S.Ct. 601, 604, 21 L.Ed.2d 658). A civil court's role, however, in resolving church property disputes is severely circumscribed by the First Amendment, but "[c]ivil courts do not inhibit free exercise of religion merely by opening their doors to disputes involving church property" (*id.* at 449, 89 S.Ct. at 606). Rather, the First Amendment forbids civil court involvement in those church property disputes "where resolution of the disputes cannot be made without extensive inquiry by civil courts into religious law and polity * * *" (*Serbian Eastern Orthodox Diocese v. Milivojevich*, 426 U.S. 696, 709, 96 S.Ct. 2372, 2380, 49 L.Ed.2d 151). Thus, although virtually any dispute over church property can be characterized generally as religious, particularly those arising out of a schism between a local church and the denominational church to which it has been affiliated, the foregoing principles establish that the First Amendment does not preclude civil court resolution of such a dispute so long as the method selected by the civil court for resolving the dispute does not require extensive civil court inquiry into ecclesiastical matters (compare *Jones v. Wolf*, 443 U.S. 595, 99 S.Ct. 3020, 61 L.Ed.2d 775 with *Serbian Eastern Orthodox Diocese v. Milivojevich, supra*.)

In *Jones v. Wolf* (*supra*), the court held that the "neutral principles of law" approach to resolving church property disputes does not run afoul of the First Amendment. In so doing, however, the court noted that a State

is free to adopt any one of a number of methods for resolving such disputes, so long as the method chosen does not involve extensive inquiry into religious doctrine or polity (*id.* at 602, 99 S.Ct. at 3024). The Court of Appeals has recently employed the "neutral principles of law" approach to a religious dispute involving a marital agreement (*Avitzur v. Avitzur,* 58 N.Y.2d 108, 459 N.Y.S.2d 572, 446 N.E.2d 136 (1983)); and the same approach should be used to resolve this church property dispute (see *Russian Church of Our Lady of Kazan v. Dunkel,* 33 N.Y.2d 456, 462, 354 N.Y.S.2d 631, 310 N.E.2d 307).

Jones v. Wolf, 443 U.S. 595, 603, 99 S.Ct. 3020, 3025, 61 L.Ed.2d 775, *supra* instructs that, under the "neutral principles of law" approach to resolving church property disputes, a civil court may examine the deeds, the local church charter, the constitution of the general church and State statutes governing the holding of church property, to determine the intentions of the parties concerning ownership in the event of a schism. The court cautioned, however, that "[i]n undertaking such an examination, a civil court must take special care to scrutinize the documents in purely secular terms, and not to rely on religious precepts * * *" (*id.* at 604, 99 S.Ct. at 3025).

New York property disputes in the Presbyterian Church are often governed by section 69 (subd. 3) of the Religious Corporations Law, which requires the trustees of the local church to govern the property in accordance with the constitution of the United Presbyterian Church in the United States of America (see, e.g., *Trustees of Presbytery of New York v. Westminster Presbyterian Church of West 23rd Street,* 222 N.Y. 305, 118 N.E. 800). For churches incorporated prior to 1828, the provisions of the Religious Corporations Law are not applicable if they are inconsistent with the law as it existed at the time of incorporation, unless the church reincorporates after 1828 or the trustees, by resolution, determine

that the provisions of the Religious Corporations Law shall apply (Religious Corporations Law, §24). Here the local church incorporated in 1803, and the provisions of section 69 (subd. 3) of the Religious Corporations Law are apparently inconsistent with the law at that time (see *Matter of First Presb. Soc. of Buffalo*, 106 NY 251, 254, 12 N.E. 626). The record reveals no reincorporation by the local church subsequent to 1828 and no resolution by the trustees determining that the provisions of the Religious Corporations Law shall apply. Thus, the relevant New York statute governing ownership and control of church property is inapplicable.

Turning to the original certificate of incorporation of the local church, it is silent as to the manner in which local church property is to be owned and controlled, as is an amended certificate filed in 1809. Similarly, the various deeds in evidence by which the local church acquired property over the years contain nothing to indicate that the denominational church had any interest, legal or beneficial, in the property.

Turning now to the constitution, or Book of Order, of the denominational church, care must be taken to make the examination in light of the Supreme Court's cautionary instruction, noted above, that the document be scrutinized in purely secular terms. Defendants rely alternatively on two provisions in the Book of Order to establish the parties' intent that the denominational church retain control over the local church's property in the event of a schism.[2] In part II, chapter XXXII, section 62.11, the Book of Order provides that whenever a local church has been dissolved or becomes extinct, "such property as it

2. Defendants contend that the wording of these two provisions differs from that of similar provisions in the Book of Order reviewed by the Georgia courts in *Wolf v. Jones*, 244 Ga. 388, 260 S.E.2d 84, *cert. den.* 444 U.S. 1080, 100 S. Ct. 1031, 62 L.Ed.2d 763, following remand from the Supreme Court, and that, therefore, the result herein should be different from that in *Wolf*, where the courts ruled that the local church retained control of its property.

may have * * * shall be held * * * as the presbytery may direct in conformity with the Constitution of the United Presbyterian Church in the United States of America". The provision, however, is expressly limited to dissolution or extinction of a local church, which concededly has not occurred here. Moreover, the phrase "such property as it may have" can be read as recognizing the local church's right to control and dispose of its property before it is dissolved or becomes extinct. Next, defendants rely on sections 41.07 and 41.15 of chapter XI of part II. Section 41.07 expressly vests in the "session", which is the governing body of the local church elected by its communicant members and moderated by its minister, "the exclusive authority over the uses to which the church buildings and properties may be put * * *". Section 41.15 authorizes the Presbytery, or regional governing body, to appoint a commission to replace a local church's session if it finds that the session is unable or unwilling to manage wisely the affairs of its church. Defendants actually used this provision here. Concerning the control of local church property, this provision is ambiguous in view of the general principles of church government contained in part II, chapter V, section 35-03, which provides that the "judicatories", including the Presbytery, shall have no "civil jurisdiction", and that "[t]heir power is wholly moral or spiritual, and that only ministerial and declarative". Of greater significance is that in 1929 an amendment to the Book of Order was proposed which would have expressly provided that the local churches held their property in trust for the denominational church. The proposal was rejected, but in 1981, long after the dispute at issue here arose, a similar amendment was proposed and accepted. Although this latter amendment stated that its purpose was simply to declare a principle adhered to by the church from its inception, the proposal and rejection of a similar amendment in 1929 indicates otherwise.

The foregoing factors amply support the trial court's decision. The deeds clearly vest title to the property exclusively in the trustees of the local church. The Book of Order leaves exclusive control over the property with the local governing body, and while defendant Presbytery has jurisdiction over the local governing body, that jurisdiction is expressly limited to moral or spiritual matters. Thus, at the time the instant dispute arose, the relevant documents contained no clear expression of the parties' intent that control over local church property be granted to defendants in the event of a schism. The proposal and rejection of a trust amendment in 1929 and the proposal and acceptance of a similar amendment in 1981 provide further proof establishing that such was not the intention of the parties. It should be emphasized that this analysis requires no inquiry into church doctrine or polity. Nor does the Book of Order incorporate religious concepts in the provisions relating to ownership of property. Rather, the foregoing conclusion results from examination of the relevant documents in light of "objective, well-established concepts of trust and property law familiar to lawyers and judges" (*Jones v. Wolf*, 443 U.S. 595, 603, 99 S.Ct. 3020, 3025, 61 L.Ed.2d 775, *supra*)".

Before concluding, some of defendants' arguments should be disposed of directly. Defendants maintain that pursuant to *Watson v. Jones*, 80 U.S. 679, 13 Wall. 679, 20 L.Ed. 666, the First Amendment requires civil courts to defer to church decision in disputes involving church affairs. The holding in *Watson*, however, has clearly been modified over the years and, as noted above, *Jones v. Wolf* (*supra*) authorizes civil court involvement in church property disputes under the "neutral principles of law" approach employed herein. Defendants also maintain that New York law requires deference to the church decision herein, but the cases cited for this proposition (*Trustees of Presbytery of New York v. Westminster Presbyterian Church of West 23rd Street*,

222 N.Y. 305, 118 N.E. 800, *supra; Matter of Presbytery of Albany*, 62 Misc.2d 791, 312 N.Y.S.2d 505, *affd.* 35 A.D.2d 252, 315 N.Y.S.2d 428, *affd.* 28 N.Y.2d 772, 321 N.Y.S.2d 377, 269 N.E.2d 918, *app. dsmd.* 404 U.S. 803, 92 S.Ct. 80, 30 L.Ed.2d 35) were decided on the basis of statutes not applicable here. Relying upon *Serbian Eastern Orthodox Diocese v. Milivojevich*, 426 U.S. 696, 96 S.Ct. 2372, 49 L.Ed.2d 151, *supra*, defendants argue that deference must be given to the decision of defendant Presbytery to appoint a commission to replace the session of the local church and that, therefore, the courts of this State cannot resolve the property dispute. In the *Serbian* case, however, control over the disputed property concededly rested with the bishop of the diocese and the real dispute was over the propriety of the decision of the denominational church to remove the bishop, clearly a matter of church polity. Here, in contrast, the dispute is the classic one over the control of local church property in the event of a schism between the local church and the denominational church with which the local church has been affiliated, and resolution of that dispute does not depend upon the propriety of any disciplinary action taken by the denominational church. Defendants also rely on the lengthy affiliation of the local church with the denominational church, but mere involvement of the local church in defendants' ecclesiastical affairs does not necessarily subject the local church to defendants' control insofar as its property matters may be concerned (*New York Dist. of Assemblies of God v. Calvary Assembly of God*, 64 A.D.2d 311, 314, 409 N.Y.S.2d 842). Defendants assert that beneficial use or control of the property is at issue here, not legal title, but that is true of most intrachurch property disputes. Indeed, the theory that civil courts should not become involved where the dispute involves use or control of church property, rather than legal title, was advanced by the dissenters in *Jones v. Wolf*, 443 U.S. 595, 610-621, 99 S.Ct. 3020, 3029-3034, 61 L.Ed.2d 775. Finally, that

defendants may be a hierarchical religious organization, rather than congregational, as defendants contend, is not dispositive of this dispute under the "neutral principles of law" approach, for this argument, too, was advanced by the dissenters in *Jones v. Wolf* (*supra*).

The only affirmative injunctive relief granted by the judgment appealed from herein concerns the local church property. Since the proof in the record, using the "neutral principles of law" approach, provides an ample basis for the trial court's finding that the parties had no intention, at the time this dispute arose, to have defendants obtain control of local church property in the event of a schism, the judgment should be affirmed.

Remittitur

COURT OF APPEALS
STATE OF NEW YORK

The Honorable Lawrence H. Cooke, *Chief Judge*,
Presiding

No. 177

First Presbyterian Church of Schenectady, et al.,
Appellants,

v.

United Presbyterian Church in
The United States of America, et al.,
Respondents.

The appellant(s) in the above entitled appeal appeared by Simon, Trieble, McNamara & Rider, Esqs.; the respondent(s) appeared by Duncan S. MacAffer, Esq.

The Court, after due deliberation, orders and adjudges that the order, insofar as appealed from, reversed, without costs, and judgment of Supreme Court, Saratoga County, reinstated. Opinion by Judge Simons. Chief Judge Cooke and Judges Jasen, Jones, Wachtler, Meyer and Kaye concur.

The Court further orders that the papers required to be filed and this record of the proceedings in this Court be remitted to the Supreme Court, Saratoga County, there to be proceeded upon according to law.

I certify that the preceding contains a correct record of the proceedings in this appeal in the Court of Appeals and that the papers required to be filed are attached.

/s/ DONALD M. SHERAW
Donald M. Sheraw,
Clerk of the Court

Court of Appeals, Clerk's Office,
Albany, May 15, 1984

STATE OF NEW YORK

COURT OF APPEALS

EAGLE STREET
ALBANY, NEW YORK 12207

DECIDED JULY 5, 1984

No. 177, Mo. No. 631

First Presbyterian Church of Schenectady,
Herbert S. Mekeel, Individually &c.,
Appellants,

vs.

United Presbyterian Church in
The United States of America
and Presbytery of Albany,
Respondents

Motion for reargument denied.